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7 THE LINCOLN NATIONAL LIFE INSURANCE  
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8

9 **UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

10 THE LINCOLN NATIONAL LIFE  
11 INSURANCE COMPANY,

12 Plaintiff,

13 v.

14 H. THOMAS MORAN, II, Court-  
Appointed Receiver of LYDIA CAPITAL,  
15 LLC,  
16 Defendant.  
17  
18

Case No. 08-CV-00023-IEG-NLS

**PLAINTIFF'S *EX PARTE***  
**APPLICATION FOR CONTINUANCE**  
**OF MAY 19, 2008 EARLY NEUTRAL**  
**EVALUATION CONFERENCE AND**  
**PERMISSION TO PARTICIPATE VIA**  
**TELEPHONE**

19 Pursuant to Civ.L.R. 83.3(h), Plaintiff THE LINCOLN NATIONAL LIFE  
20 INSURANCE COMPANY ("LINCOLN"), hereby respectfully applies *ex parte* for an  
21 order continuing the Early Neutral Evaluation Conference (the "Conference") scheduled  
22 for May 19, 2008 at 2:00 p.m. in the Chambers of Magistrate Judge Nita L. Stormes.  
23 Lincoln moreover requests that the Court permit Lincoln to participate in the Conference  
24 by telephone.  
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**ARGUMENT IN SUPPORT OF *EX PARTE*  
APPLICATION OF THE PLAINTIFF**

On April 7, 2008, Magistrate Judge Stormes issued a Notice and Order setting the date and time of the Conference. Counsel for the Receiver has submitted an unopposed application to continue the Conference until [CONFIRM DATE] to allow the parties to respond to written discovery requests. Lincoln supports the Receiver in that request. The parties have had extensive discussions relative to a possible resolution, but believe further discussions would be most fruitful following preliminary discovery. For the same reasons, the Conference is likely to be more helpful after the exchange of preliminary discovery, and Lincoln accordingly requests continuance of the same.

Lincoln moreover requests permission for its representative, Stephanie Farabow, Esq., to participate in the Conference via telephone. Specifically, because Ms. Farabow has direct responsibility for the pending litigation and is the only Lincoln employee with sufficient knowledge to ensure fruitful discussions with opposing counsel and with the Court, it is necessary for her to participate in the Conference. Ms. Farabow, however, is responsible for the care of her three young children. Because Ms. Farabow's child care responsibilities render overnight travel to California from her North Carolina residence very difficult, Lincoln respectfully requests permission to participate in the Conference via telephone, whether or not the Court grants the requested continuance.

Finally, no prejudice to Defendant will result should this application be granted. Jason P. Gosselin, co-counsel for Lincoln, notified Shannon K. Emmons, counsel for Defendant, that Lincoln intended to apply to the Court for continuance of the Conference and for permission to appear by telephone. Ms. Emmons did not object to Lincoln's intended application, provided that Lincoln agreed not to object to a similar application, if made by Defendant.

**CONCLUSION**

For the reasons above, Plaintiff moves this Court to grant its application for an order continuing the Early Neutral Evaluation Conference and permitting Lincoln to participate via telephone.

Respectfully submitted,

Dated: May 7, 2008

DRINKER BIDDLE & REATH LLP

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Attorneys for Plaintiff  
THE LINCOLN NATIONAL LIFE  
INSURANCE COMPANY

**CERTIFICATE OF SERVICE**

I, Heath M. Lynch, do hereby certify that today, May 7, 2008, I electronically filed the foregoing *Ex Parte* Application for Continuance of May 19, 2008 Early Neutral Evaluation Conference and Permission to Participate by Telephone, of Plaintiff The Lincoln National Life Insurance Company, with the Clerk of Court using the CM/ECF system, which will send notice of such filing to CM/ECF participants. A true and correct copy of the foregoing is also being provided to the following person by first class mail, postage prepaid, at the following address:

Shannon K. Emmons, Esq.  
PHILLIPS McFALL McCAFFREY  
McVAY & MURRAH, P.C.  
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*Counsel for Defendant  
H. Thomas Moran, II, as  
Court-Appointed Receiver of  
Lydia Capital, LLC*

/s/ Heath M. Lynch  
Heath M. Lynch